

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On March 1, 2019 appellant, then a 33-year-old criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on February 26, 2019 he sustained lower back and neck pain when he was driving to work in a government-owned vehicle and was rear-ended by another vehicle while in the performance of duty.

In a report dated February 26, 2019, Dr. Ramin Javan, a Board-certified neuroradiologist, related that he had examined appellant in a hospital emergency department after appellant was involved in a motor vehicle collision. A computerized tomography (CT) scan of the cervical spine, obtained due to indication of neck pain, demonstrated no evidence of acute displaced fracture, normal alignment, and degenerative changes of the spinal canal.

By development letter dated March 19, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

Thereafter, OWCP received a billing statement for hospital services dated March 14, 2019.

By decision dated April 22, 2019, OWCP accepted that the February 26, 2019 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted evidence containing a medical diagnosis in connection with the accepted employment incident.

On July 11, 2019 appellant requested reconsideration. He submitted a hospital emergency department clinical summary from Dr. Javan dated February 26, 2019 who noted that appellant suffered neck pain and left-sided lower back pain after his vehicle was struck from behind at a traffic light. On physical examination Dr. Javan observed mild tenderness to deep palpation of the left lower back. The February 26, 2019 CT scan findings were resubmitted. Patient instructions were provided relating to neck pain with no trauma and a motor vehicle collision with no serious injury.

By decision dated July 12, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence submitted on reconsideration was cumulative and substantially similar to evidence that was already contained in the case file and had been previously considered.

In an emergency department report dated February 26, 2019, Dr. Leah Steckler, a specialist in emergency medicine, and, attending physician, Dr. Natalie Kirilichin, Board-certified in emergency medicine, noted that appellant had been involved in a motor vehicle collision in which he was rear-ended with no airbag deployment. Appellant complained of neck pain and left-sided lower back pain. Also included in the emergency department report was the ICD-10 code corresponding to an assessment of person injured in a motor vehicle accident. This report also

related that x-rays of appellant's lumbosacral spine obtained on February 26, 2019 due to an indication of lumbar pain demonstrated no acute fracture or dislocation, normal alignment, and no soft tissue abnormality. Similarly, an x-ray of the sacrum and coccyx obtained on the same date demonstrated no acute fracture or dislocation, intact sacroiliac joints, and unremarkable soft tissues.

On October 4, 2019 appellant again requested reconsideration.

By decision dated January 2, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

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<sup>3</sup> 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>6</sup> *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant's October 4, 2019 request for reconsideration neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that it did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

In support of his reconsideration request, appellant submitted a complete copy of the February 26, 2019 emergency department. The completed report included results of x-rays of the lumbosacral spine, sacrum and coccyx demonstrating normal findings with no acute fractures or dislocations and the ICD-10 code corresponding to an assessment for person injured in a motor vehicle accident. These portions of the February 26, 2019 emergency department report, like the portions previously submitted, note appellant's history of injury, but do not contain a valid diagnosis of a condition.<sup>8</sup> The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>9</sup> As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> See *C.C.*, Docket No. 20-0590 (issued October 29, 2020); *M.J.*, Docket No. 19-1979 (issued August 12, 2020); *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *J.S.*, Docket No. 18-0726 (issued November 5, 2018).

<sup>9</sup> *A.J.*, Docket No. 20-0926 (issued January 26, 2021); *Jimmy O. Gilmore*, 37 ECAB 257 (1985); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 2, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 28, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board